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Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of	)	
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Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

To: The Commission

Comments in the Federal Communication Commission's Further Notice of Proposed Rulemaking Regarding Broadcast Television Ownership Rules

The Federal Communication Commission is charged with furthering the public's interests in telecommunications, however the FCC has not kept up with the enormous technological, sociological and economic changes that have permanently changed the industry. The public's needs and interests are very different in 1995 with the telecommunications industry exploding than they were in 1934 when a single AM radio station was a special thing.

When the Commission should be ensuring that the telecommunications industry make the transition from a monopolistic, regulated past to a multiple technology, competitive future, it has sat on the sidelines focusing on its 1934 rulebook. The Commission continues to discourage and thwart creative, novel and breakthrough ideas in broadcasting and telecommunications through its rules and regulations. This is particularly true of the Commission's completely outdated policies on ownership in broadcasting. Microsoft would never have been a world leader in software if the computer industry had been subject to FCC-like regulations for the past 15 years.

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The Commission's Proposed Rulemaking in Television Ownership Rules is a step in the right directions. The greatest danger to the public interest is that the Commission will not go far enough in untying American broadcasting from the quaint 1950's era rules designed to protect an innocent and unsuspecting American public from propagandists.

These comments are being filed in this rulemaking in the hope that they will help remove the barriers to free, competitive markets in American broadcasting. My twenty two years in broadcasting includes building and owning several radio stations in the southeast and ownership of WYDO-TV in Greenville, NC. Three of the radio stations I was involved with had LMA's in place at some time, and the television station is currently receiving two thirds of its programming from another station under a programming agreement. Not only have I observed the changes sweeping over the industry, but I have also seen how the Commission's rules impact competition in broadcasting and how LMA's actually work from both the programmer and from the licensee side of the issue.

These experiences have demonstrated to me that the FCC can best ensure that the future of US telecommunications develops and meets the public interests and needs by first ensuring that the Commissions rules and policies promote <u>efficient and freely competitive markets</u> in the telecommunications fields, particularly in broadcasting.

1. National and Local Ownership Limits Should be increased.

US Terrestrial Broadcast Television is where local television programming originates. High costs and tremendous competition have forced broadcast television to cut back on expensive local programming. To restore the economic vitality necessary to develop and grow local programming, television broadcasters should be permitted to be efficient and still be competitive.

For them to be efficient, they need to be able to use spectrum as the marketplace demands. They need to form strategic alliances and possible ownership relationships with radio, cable, telco, PCS and computer technologies. They must have deregulation.

But they should remain competitive. There needs to be a competitor bound by the same technology in their market area. An excellent example of this is the cellular system in the U.S. In every market there are two operators using the same technology. This gives the operators economies of scale essential in meeting the technical requirements of cellular and the needs of its customers, but also ensures that the consumer always has at least two choices. This would be a good model for broadcast television (and radio for that matter). Allowing broadcasters to own up to 50% of a market, and stations serving up to 50% of the national households, would permit broadcasters efficiencies and economies of scale to develop expensive programming including news and investigative programming in a local market, as well as program smaller coverage stations with niche and specialty programming aimed at a local audience and available now only for nationwide audiences on cable.

Essentially, cable has no wired video competition and local telephone companies have no wired dial tone competition. Broadcast television has in almost every market at least 4 or 5 competitors and in many markets more than 10. Nearly two-third of U.S. households view local broadcasters over the local cable monopoly, and in all of these homes, the each local broadcaster is only one of 30 to 200 television programs available. Clearly, U.S. terrestrial broadcasters have more than enough competition and it is this level of competition with all its costs and redundancies that has made terrestrial broadcasters slaves to national syndicated programmers and networks to fill their airtime at a cost lower than they can afford to supply it locally.

It is in the public's best interests to have strong local broadcasters. In the early days of radio and television when there were only a few broadcasters in each market, operators were successful enough to provide a variety of local programming including how-to shows, kids programming and extensive local news. Cut throat competition has turned many radio stations into a syndicated morning show and automated music box and many local television stations into just another outlet for national programmers and advertisers.

Television broadcasters know, like the local newspaper, that their survival over the next 20 years depends on their serving the local audience with local programming or stories. They want to do it because without it they will become obsolete. But if they cannot afford the investment, the programming won't be developed and eventually most local terrestrial broadcasters will be replaced by cable channels or become mere repeater stations for nationwide networks.

All the best intentions in the world on the part of the broadcaster and the FCC do not overcome this basic fact: given a choice between the local Chamber of Commerce TV show and "CNN", today's television audience will pick the latter. Given a choice between a pathetic clown with a horn and bad makeup, or the slick programming of Nickelodeon, even a child knows how to push the remote button for Nick.

Local broadcast stations simply cannot afford to produce quality local programs when they have but one outlet for their material. Local stations can and will produce more quality programming if they have additional channels serving different audiences over which they can rerun, repackage and time-shift those local programs. Such an efficient use of local programming lowers the effective cost of each airing to the local station, improving the economics of producing quality local shows that serve the needs and interests of the local public.

Therefore, ownership limits should be lifted to allow broadcasters to own as many stations as they wish up to a maximum of 50% of total national potential audience and a maximum of 50% of local audience. Total national audience would be determined by households in that market, not market share of the owned station. In a local market, broadcasters should be allowed to own up to 50% of the market share as determined by Nielsen in the last two ratings surveys.

2. Radio/Television Cross Ownership.

Radio and TV have been separated by FCC rules for so long, and market forces have impacted them to such an extent that they now bear almost no resemblance to each other in the way they are used by the audience and advertisers, and in the way they are programmed and marketed by broadcasters.

Once, both radio and television aired programs that people specifically tuned in for. Today only television is a medium of programs. People surf the channels to find their favorite programs. Radio, on the other hand, is lifestyle formatted and is continuous. Most people listen to two or three stations that appeal to their music tastes and lifestyle. Programming and marketing these two different mediums to audiences and clients are completely different, as I have witnessed in my years in broadcasting, first in radio, then in television. Television's gross ratings points and Nielsen ratings are a world apart from radio's top 10 music hits and morning show contests. One has only to watch a TV advertising representative and a radio ad rep try to work out an agreement to exchange commercial air time for promotions to realize that they are talking different languages and understand little of how the other media works. Clients view them as distinctly different media and not interchangeable, and so radio stations end up selling against other radio stations, TV stations against TV stations.

The Commission may receive few comments about this area because so few people relate to or understand how both TV and radio work and broadcasters probably won't express much interest in removing this prohibition. However, the rule should be abolished to permit the innovators to own both types of operations in the same market and try some new programming and marketing ideas.

3. Local Marketing Agreements (LMA's).

There are two fundamental questions to consider when considering the issue of LMA's:

- Is it in the public interest that there are so many LMA's today? and
- Is the LMA concept in the public interest?

Having been involved in LMA's in both radio and television, I have given the matter a considerable amount of thought. It probably is not good that there are so many LMA's today in broadcasting, however, LMA's themselves do not harm the public interest, and can even make it possible for licensees to better serve the public interest.

To expand on this, it is necessary first to understand the three different types of LMA's utilized broadcasting today and the reasons that have driven their growth.

The first type of LMA developed when more innovative and more successful radio broadcasters watched other stations in their markets cut staff, cut costs and even go bankrupt. The good operators were prohibited by FCC rules from owning the failing station, but the LMA allowed them to program the station and market it. The result was generally a more successful station that attracted more audience and better served the public. With the change in radio ownership rules permitting 1 mv contour overlap and simple duopoly, the Commission has begun to remove the barriers to good radio broadcasters owning and operating multiple stations in their own market. With these rules even partially relaxed in radio as they are now, the growth of LMA's has fallen off.

A good example of how important this is can be found in our market of Greenville-New Bern-Washington, NC. Since duopoly was permitted in radio, every FM radio station sale but one in this market has been to broadcasters that owned another radio station in the market and would have in the past been prohibited from purchasing the station by coverage overlap or duopoly rules. As a result, there are no long term LMA's of FM stations in this market and the variety and quality of radio programming has improved.

The same benefits can be realized in television broadcasting as well, particularly for economically marginal or failing UHF operators. Multiple ownership in a local market would allow a successful operator to acquire the failing operator's facility and program that facility to a higher standard. Such secondary facilities, subsidized by the successful operator, would be freed from the daily struggle to survive. These facilities would be the incubators for new networks, alternative and niche programming and specialty broadcasting.

The second main type of LMA's is the short term LMA. Frankly, this type of LMA is a reaction to the miserable process of transferring licenses. In almost every other kind of business endeavor in America, once a deal to purchase has been struck, closing can occur in a matter of days or even hours. In broadcasting, operators are denied this essential business certainty. The application approval process at the FCC typically takes 50 to 90 days under the best circumstances. The delay can become 6 to 12 months if a disgruntled employee, or anyone else, cares to toss a filing into the transfer application process. Broadcasters that have agreed to transfer a license must sit and wait for approval from the FCC while business realities take their toll. The staff at the station being acquired become nervous and dispirited. Valuable employees may quit to seek more secure employment before the new owner is approved. Sales generally fall off during the pendency period. The seller stops spending money on repairs and maintenance since it has "sold" the station. The uncertainty of this period is a terrible burden on the buyer, the seller and on the staff of the acquired station. The short term LMA has been a real benefit for broadcasters to ameliorate these problems.

This short term LMA would disappear overnight if the FCC changed its rules to allow simple public notification of licensee transfers stating all the necessary facts contained in a transfer application. Something similar to the FCC's current ownership report would work. If a broadcaster is incompetent or unqualified, the Commission can move to revoke its license at renewal time or on the Commission's own action. The current transfer approval process serves no purpose; out of the thousands of transfer applications approved by the Commission over the past five years, very few have been denied due to a character or qualification issue. Meanwhile, thousands of broadcast license transferors and transferees suffer through a slow, uncertain process that has long since outlived its usefulness.

The third type of LMA enhances the public interest standard by giving licensees options they didn't have until recently. For example our UHF television station in Greenville, NC has benefited from this type of a LMA. After the station was built, it was struggling. It had no cable carriage.There were no other networks available to affiliate with, and its future looked dim. A Programming Agreement was worked out with the Fox station in the market. The Fox station poorly covered the market while its competition of 3 network VHF's on 2000 foot towers dominated the market. The Fox programming that I now carry as part of the LMA gave me bargaining power with the cable systems to achieve excellent cable carriage. The payments from the LMA helped make the station financially viable. With our small success we have been able to add staff and expand the programming that we offer as the licensee. We are now a 24 hour operation with about one third of our week programmed by our staff, the remaining time programmed by the Fox station. Our locally produced Crimewatch program has assisted area police and resulted in many arrests. We wouldn't have been able to produce it or get results without the LMA making us a viable, and much watched television station on cable and over the air in this market.

This type of LMA allows broadcasters who love the business but who are in financial trouble an opportunity to remain a licensee and solve their financial problems. It allows existing stations to extend their programming reach in innovative ways without a big upfront expense, and it permits newcomers to broadcasting an opportunity to program time on stations, learn the business, and add their voice and ideas to the airwaves, without having to secure large capital financing.

The reason there are so many LMA's today in both radio and television is that many broadcasters faced with economic stagnation or ruin found LMA's to be a key to survival. Most LMA's are simple reactions to the Commission's completely outdated and irrelevant ownership rules. LMA's are not being put together by broadcasters in order to enrich communication attorneys or to vex the FCC with more issues to ponder. They are being done mostly out of economic necessity and for survival.

The concerns that the FCC has about the LMA's today will largely disappear by removing the obsolete ownership rules that bind broadcasters to the 40's and 50's while other technologies and their ownerships are preparing to enter the 21st century. With the rules modified and ownership and transfer restrictions eliminated there will still be a few LMA's of the third type described above, but as long as the licensee continues to meet the standards and conditions currently required of licensees in an LMA relationship, the public interest will be served in new and innovative ways.

Conclusion.

At the bottom of this Rulemaking is the question, "does de-regulating the U.S. broadcast television ownership rules harm the public interest?" or put another way, "are John and Jane Doe harmed by this?"

Put yourself in the shoes of the man in the street in our small market in eastern North Carolina. He is surprised to know that FCC restricts ownership of TV stations. Why is that a big deal, he shrugs, when on his local cable monopoly Turner owns 5 channels , Viacom owns 4, TCI/Liberty own parts of nearly all the major channels and Cap Cities owns 2 and programs much of another. So what if two broadcast channels are owned by the same group? What is the downside? Will the news still come on at 6 pm?

One can explain to him that once upon a time there was only two TV stations and there was some concern about some single entity controlling all the television airwaves. But what's the problem now, he asks. He has 50 channels on his television, not including pay per view. Even without cable he can go Sears and get the 18" satellite receiver and get over 100 channels. And over the air, he can get 5 channels from this market and 5 channels from Raleigh. And even if he had his television set on, there's less and less chance he's even watching real time television. He might watch a movie from the video store/gas station on the corner or a Jane Fonda workout tape. With the sales of personal computers topping the sales of television receivers for the first time ever in 1994, it is increasingly likely his family will be spending more and more time in front of a computer screen and less time in front of any television set. So who cares if two video sources out of the dozens (hundreds in some areas) are co-owned. No doubt there are those in the broadcast industry who want to preserve the status quo for financial reasons, and there are politicians and regulators who are loathe to lift obsolete regulations. But this is not a reason to keep obsolete rules. As long as there is not a total monopoly, some concentration of broadcast television ownership is not an issue with the man on the street. The man on main street USA simply does not care.

One of the things that the man in the street does care about is his local television station telling him about his community through news and programs. Unless local broadcasters can innovate and grow locally, they will be hard pressed to continue to provide this service. Their local programs will be replaced by nationally distributed programs reflecting nothing of the needs and concerns of the local citizenry. Broadcasters need the economic freedom and flexibility that comes from deregulating broadcast ownership rules. Without it, their industry will be left in the dust.

Americans deserve the best telecommunications policy, one that is free and open and encourages innovation and healthy competition; one that is not micromanaged from Washington, DC. Eliminating rules that discourage innovation will help keep America at the forefront of developments in telecommunications gobally.

We need innovation in all sectors of our telecommunications industry, even if it is a sector as increasingly irrelevant and technologically obsolete as United States analog terrestrial broadcast television. The Commission must now please step out of the way.

Declaration of Frederick J. McCune

I am the president of the licensee of WYDO-TV, Greenville, NC. I have owned and operated radio and television stations in North Carolina for the last 12 years. In the last few years, I have been involved in several radio and one television LMA and the pleading supplied herewith are my own comments.

I, Frederick J. McCune, state that to the best of my knowledge under penalty of perjury that the foregoing is true and correct.

April 14, 1995